

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-057-10032R

Parcel No. 18311-78040-00000

Dan and Elli Netolicky,

Appellants,

vs.

Linn County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on December 4, 2019. Annette Wieneke represented Dan and Elli Netolicky. Chief Deputy Assessor Tami McFarland represented the Linn County Board of Review.

Dan and Elli Netolicky own a residential property located at 1265 Evelyn Drive, Ely. The property's January 1, 2019, assessment was set at \$487,800, allocated as \$80,600 in land value and \$407,200 in dwelling value. (Ex. A).

Elli Netolicky petitioned the Board of Review contending the assessment was not equitable as compared with the assessments of other like property, the property was assessed for more than the value authorized by law, and there was an error in the assessment. Iowa Code § 441.37(1)(a)(1, 2, & 4) (2019). The Board of Review granted the petition in part and lowered the assessment to \$447,100. (Ex. B).

Netolicky then appealed to PAAB reasserting her claims. § 441.37(1)(a)(1, 2 & 4).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701–126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. *Id.*; *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is a two-story home built in 2017. It has 2328¹ square feet of gross living area, a full basement with 1290-square-feet of living-quarters quality finish, two open porches, a patio and deck, a three-car attached garage, and a one-car-basement garage. It is listed in normal condition with high-quality construction (grade 2-05). In addition to 1% physical depreciation, a 3% functional obsolescence adjustment was applied to the improvements for the assessment. The site is 0.723 acres.

The Netolickys purchased the subject site in September 2017 for \$60,000. (Ex. A). Annette Wieneke admitted the Netolickys purchased it from a brother-in-law's company that had developed the subdivision. Tami McFarland the Chief Deputy Linn County Assessor testified minimal credence was given to 2017 site sale because she believed it was a sale between related parties.

¹ The subject property was listed as having 2376 square feet on the initial 2019 assessment. Subsequent to an inspection by the Assessor's Office and the Board of Review hearing, the property's square footage was corrected to 2328 square feet.

Subsequent to purchasing the lot, the Netolickys constructed their home. They acted as their own general contractor. She asserts a total cost of construction including the site was \$310,712. (Ex. 1).

They Netolickys believe there are errors in both the measurements of their home as well as their site. Annette asserts the Assessor's Office incorrectly included the opening for the stairs in the living area. Guy Wieneke, also testifying on the Netolickys behalf, echoed this concern. Annette asserts the property's correct size is 2230 square feet but she did not provide any support for this figure. The Netolickys also submitted an appraisal prepared by Natalie Nelson, Natalie Nelson Appraisal, Cedar Rapids. Nelson calculated a gross living area for the subject of 2255 square feet. (Ex. 13). However, no floor plan or sketch is included in the portion of the appraisal that the Netolickys submitted. We note this figure also differs from Annette's figure.

McFarland testified the gross living area would include the stairs. Further, she noted an appraiser from her office personally measured the property and at that time discovered an error resulting in the gross living area being reduced to reflect the current size of 2328 square feet of total living area. (Ex. D).

Annette also contends the subject site is smaller than listed by the Assessor's Office and should be valued differently. She reports the subject site is burdened by both a 0.215-acre retention basin with a city easement and also a utility easement. She claims that because of the retention basin, the Netolickys had to modify the plans of their house to fit on the lot. In Annette's opinion, the Netolickys should not be assessed for this portion of the site. Guy also believes the usable size of the lot is smaller than the total lot size and thus should not be assessed. We note Nelson did not identify any adverse site conditions in her appraisal, and considered the entirety of the subject site when valuing the property. (Ex. 13).

McFarland testified nearly all properties have utility easements and asserted the retention basin aids in drainage.

The Netolickys submitted six properties in support of their inequity claim. The properties are summarized in the table below. (Ex. 1).

Address	Lot Size	Gross Living Area (SF)	2019 Assessed Values (AV)	Sale Date	Sale Price
Subject	0.723	2328	\$447,100	NA	NA
1 – 1900 Meadow Pl	0.371	1690	\$318,400	6/2019	\$330,000
2 – 3030 Eastland Ln	0.263	1778	\$345,100	6/2019	\$364,900
3 – 1165 Sunrise Dr	0.248	1584	\$268,600	7/2019	\$322,500
4 – 1435 Parkland Dr	0.488	1754	\$355,300	NA	NA
5 – 1615 Parkland Dr	0.657	1965	\$331,400	NA	NA
6 – 1970 Fox Ridge Rd	0.488	2255	\$341,400	NA	NA

The Netolickys' comparables are all one-story frame homes whereas the subject has a two-story design. Additionally, the majority of these properties have much simpler exteriors with gabled roofs as compared to hip roofs like the subject. Most notably, the majority of the properties are significantly smaller than the subject property. Three of the properties sold in 2019 but were not adjusted to account for differences between them and the subject property, or to conclude an opinion of value for the subject property as of January 1, 2019. Nevertheless, the sales and assessments suggest these properties were assessed for less than their market value for the 2019 assessment, or the market is increasing.

The Netolickys also noted the assessments of two lots located in Buresh Estates, Ely. (Exs. 1, 9, & 10). Annette asserts these larger sites have lower land values than the subject. The properties have 2.21 and 2.11 acres and are valued at \$56,100 and \$55,600, respectively, as compared to the subject's 0.723-acre lot valued at \$80,600. In her opinion, this demonstrates inequity. McFarland explained larger sites are valued on a per-acre basis, whereas the subject site was valued on a per-front-foot basis. (Ex. G). These two comparables are also located on the edge of town, and priced as in-town acreages which are different from being located in town within a subdivision like the subject. (Ex. G).

In support of their over assessment claim, Netolickys submitted the Nelson appraisal. Nelson completed her appraisal for the University of Iowa Community Credit Union for a refinance transaction, valuing the property at \$400,000 as of December 2018. Annette testified the appraisal was submitted to illustrate the assessed value is

too high, but she disagrees with the valuation established in the appraisal and still believes the assessment should be based upon the cost to construct the property. Annette contends the assessment should be lowered to \$335,000.

The appraisal included three comparable properties summarized below. (Ex. 13).

Address	Lot Size	Gross Living Area (SF)	Sale Price	Sale Date	Adjusted Sale Price
Subject	0.723	2328	NA	NA	NA
1 – 1482 Crescent Oak Ln	0.349	2178	\$412,271	12/2018	\$413,271
2 – 1245 Evelyn Dr	0.488	2002	\$390,000	7/2018	\$400,100
3 – 7118 Country Ridge Dr NW	0.275	2157	\$368,701	8/2018	\$389,201

McFarland testified she did not spend a lot of time reviewing the appraisal but did not have any major concerns with the report. She also believed Comparable 1 used in the appraisal was the most similar property to the subject. However, she ultimately thinks this home is inferior to the subject, notes the appraisal states as much, but was confused why Nelson's reconciled value came in lower. She also noted Comparable 3 is in another jurisdiction, and she would not put as much weight on that sale.

Nelson also developed the cost approach to value that indicates a value for the subject property of \$400,075.

The Board of Review also submitted and analyzed six properties, which are summarized in the following table.

Address	Year Built	Gross Living Area (SF)	Sale Date	Sale Price	2019 Assessed Values (AV)	AV/SF
Subject	2017	2328	NA	NA	\$447,100	\$192.05
1 – 1900 Meadow Pl	2009	1690	6/2019	\$330,000	\$318,400	\$188.40
2 – 3030 Eastland Ln	2016	1778	6/2019	\$364,900	\$345,100	\$194.09
3 – 1165 Sunrise Dr	2014	1584	7/2019	\$322,500	\$268,600 ²	\$169.57
4 – 1435 Parkland Dr	2016	1754	NA	NA	\$355,300	\$202.57
5 – 1615 Parkland Dr	2016	1965	NA	NA	\$331,400	\$168.65
6 – 1245 Evelyn Dr	2017	2002	7/2018	\$390,000	\$372,900	\$186.26

² Board of Review noted the assessment is low due to basement finish not being included on the property record card, but this will be corrected for 2020 assessment.

The Board of Review calculated the assessed value per square foot for each of the properties to illustrate the subject is within the range of the comparables. They assert this shows the subject is fairly and equitably assessed.

Analysis & Conclusions of Law

The Netolickys contend the subject property is inequitably assessed, over assessed, and that there is an error in the assessment. § 441.37(1)(a)(1, 2, & 4).

The Netolickys claimed there was an error in the assessment. An error may include, but is not limited to, listing errors or erroneous mathematical calculations. Iowa Admin. Code R. 701-71.20(4)(b)(4). The Netolickys have original plans of the house and note the stairwell was included in the Assessor's measurements of the subject. They believe the stairway should be excluded in the calculation. McFarland testified the stairwell is included in the measurement. We note it is typical methodology to utilize exterior measurements and include all above-grade finished area, including stairways, in the calculation of gross living area (GLA). APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 225 (14th ed. 2013).

The Netolickys submitted the Nelson appraisal indicating a gross living area of 2255 square feet, but did not include the sketch with the appraisal. Absent a sketch or other evidence submitted in the record showing error, we conclude the most recent measurement by the Assessor's Office is the most accurate and reliable information in the record.

The Netolickys also claim the drainage basin and utility easement portion of the site should not be included in the total site area. The Wienekes testified the area has less appeal and should not be included as part of the subject site. Nelson's appraisal did not identify any adverse site conditions and valued the entirety of the site. While we agree this portion of the site may have less utility, it is part of the site and we find it is properly listed. The utility easement likewise is a legal part of the site and is properly listed. Therefore, Netolickys have not shown any error in the assessment. See *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275 (Iowa 1995) (rejecting taxpayer's claim that contaminated site had no value).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

We find no evidence here indicating a non-uniform assessing method was used to value similarly situated properties. The Netolickys assert some larger sites have lower assessments, but the Board of Review indicated these are larger properties on the edge of town and are not located in the subject's subdivision. They are valued on a per-acre basis while the subject is valued on a per-front-foot basis. Both methodologies are recognized methods in the IOWA REAL PROPERTY APPRAISAL MANUAL. MANUAL pp. 2-6 to 2-23, *available at* https://tax.iowa.gov/sites/default/files/idr/documents/2LANDVALUATIONSECTION_0.pdf. Ultimately, there appear to be differences between the subject and the comparables warranting a different valuation methodology and we conclude the Netolickys have not shown inequity in the assessments.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after considering the actual values (2018 sales) and assessed values (2019 assessments) of comparable properties, the subject property is assessed at a higher portion of its actual value. *Id.*

The Netolickys offered six comparable properties but no 2018 sales. Annette did not adjust the properties and only discussed differences in assessed values while asserting that they had sold for more than they were assessed. Since the *Maxwell* test requires a showing of subject's market value which is also required in an over assessment claim, we forego further inequity analysis and turn to the over assessment claim.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). Sales prices

of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion.

There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden of proof is upon the taxpayer, who “must establish a ground for protest by a preponderance of the evidence. *Compiano*., 771 N.W.2d at 396. But when the taxpayer “offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation.” Iowa Code § 441.21(3). To be competent evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782.

The Netolickys believe the subject’s actual value should be \$335,000, which is slightly more than the asserted cost of construction. We find this cost does not reflect market value because the site sale may not have been an arm’s-length transaction and the owner acted as their own general contractor; both of which may result in an artificially deflated cost of construction. Moreover, the Netolickys submitted an appraisal of the subject property valuing it for more than the construction costs. Finally, and most importantly, Iowa law directs that assessments should be based first and foremost on the sales comparison approach to value and there are sufficient sales in the record to ascertain the subject’s value by that approach. Therefore, we give the actual cost of construction no consideration as an indicator of subject’s market value.

The Nelson appraisal concludes a value for the subject property contemporaneous to the 2019 assessment date. The value it establishes for the property at \$400,000 is less than the assessment. The appraisal values the property following the statutory scheme and therefore the burden of proof has been shifted to the Board of Review to uphold the assessment. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W. 2d 594, 597 (Iowa 1990).

The Board of Review conceded the appraisal appeared reasonable. In support of the assessment, it submitted four recent sales, including the house next door to the subject. But the sales were not adjusted for differences between each property and the subject and there was no indication of value determined for the subject as of January 1, 2019. We do not find the unadjusted sales of these properties are sufficient to uphold the Board of Review's burden. *Compiano*, 771 N.W.2d at 397 (if the grounds of protest have been established, the property's correct value must be determined based on all the evidence) (citations omitted).

Viewing the record as a whole, we find the Netolickys have demonstrated their property is over assessed and the correct value of the property as of January 1, 2019, is \$400,000.

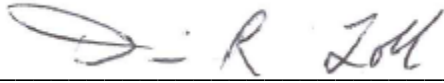
Order

PAAB HEREBY MODIFIES the Linn County Board of Review's action and orders the subject property's January 1, 2019, assessment be set at \$400,000.

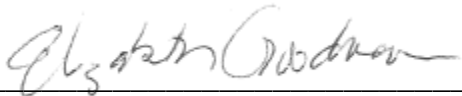
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

Copies to:

Elli Netolicky
1265 Evelyn Drive
Ely, IA 52227

Linn County Board of Review by eFile

Linn County Auditor